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[Williams v. Public Service Electric & Gas Co.](#), 94-ERA-2 (ALJ June 13, 1996)

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Date: 6-13-96

Case No.: 94-ERA-0002

*In the Matter of:*

BERT E. WILLIAMS,  
Complainant,

v.

PUBLIC SERVICE ELECTRIC & GAS COMPANY,  
Respondent.

Counsel:

David Culp, Esq.  
For the Complainant

Robert M. Rader, Esq.  
For the Respondent

Before: Charles P. Rippey  
Administrative Law Judge

**DECISION AND ORDER ON REMAND**

Judge Julius Johnson having retired, this matter was reassigned by the Chief Administrative Law Judge to the undersigned for consideration of the Secretary of Labor's April 10, 1995 Order remanding this matter for consideration of the Complainant's Motion to Enforce the Settlement Agreement previously approved by the Secretary. The Complainant asserts that the Respondent (PSE&G) was obligated by the agreement to pay him the weekly amount specified, and that purchase of an annuity which paid only the net amount, after deduction for taxes required to be withheld, violated the terms of the agreement.

The provision of the Settlement Agreement at issue, Section 15, with the dollar amounts redacted[1] follows:

Upon the effective date of this Agreement, the parties hereby agree that Mr. Williams will receive a retirement

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benefit based upon a single life annuity in the amount of not less than [\$. . .] per month and such other benefits as are in accordance with PSE&G's pension plan, including the right to enroll in, and the rights under, the "Medical-Dental Benefits Plan for Retired Employees," which provides coverage for retirees and their dependents. Mr. Williams is further entitled to increase in his retirement and other benefits as the company may subsequently grant to company retirees.

The Complainant alleges that the Respondent breached the Settlement Agreement in two ways:

- (1) *Purchasing the annuity.* The Complainant asserts that the Respondent should not have purchased the annuity in question because he never agreed "that PSE&G would purchase an annuity" on his behalf. The Complainant's position is that the last sentence of section 15 of the Settlement Agreement requires that PSE&G to have simply "supplemented the pension benefits" to which Mr. Williams was entitled in order to provide him with an income.
- (2) *Withholding of Federal and State Taxes and FICA.* The complainant asserts that the Respondent should not have withheld state tax, federal tax, and FICA from the purchase price of the annuity, but should have paid him the total amount instead of taxing him on the monthly payments.

Respondent PSE&G does not dispute that it purchased the annuity on Mr. Williams' behalf. However, PSE&G argues that this action does not amount to a breach of the Settlement Agreement because the Agreement itself clearly states that Mr. Williams' retirement benefits would be "based on a single life annuity." Moreover, PSE&G asserts that Mr. Williams received this "special treatment" at his own insistence, because PSE&G's normal pension benefits would not be available until Mr. Williams reached the age of 65. Further, PSE&G concedes that it deducted [\$. . .] from the purchase price of the annuity. PSE&G points out that it was required under Federal law to withhold this amount which represented federal income taxes due on the payments. PSE&G asserts that Mr. Williams is in fact receiving an annuity in the amount of [\$. . .] per month, less required taxes, for a total of [\$. . .] per month.

The Settlement Agreement states that "Mr. Williams will receive a retirement benefit *based upon a single life annuity.*"

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The Settlement's intent is clear. PSE&G was to purchase Mr. Williams an annuity in order to provide a "retirement benefit" under the terms of the Agreement. This is precisely the action taken by PSE&G. Mr. Williams' argument that he did not agree to this action, and that such action should result in a breach of

the Settlement Agreement, is consequently without merit.

The parties' failure to specifically address the tax consequences of the annuity in the Settlement Agreement cannot support an interpretation that PSE&G is liable to pay any taxes due in addition to the agreed monthly payment amount.

Settlement agreements are contracts for purposes of determining if one party has breached the terms of the agreement.[2] Settlement enforcement shall be governed by principles of contract law.[3] In *Macktal v. Secretary of Labor*, the Fifth Circuit established that holding parties to their initial agreement to a settlement allows the settlement process to proceed more smoothly, without fear that one or the other party will withdraw their consent.[4] In the instant case, the issues surrounding the Settlement Agreement were fully and fairly litigated. The Settlement Agreement reflects the parties' meeting of the minds on all of the issues involved in Mr. Williams' complaint. Mr. Williams, his attorney, PSE&G, and their attorneys, each signed the Settlement indicating their agreement with its terms and restrictions. The parties did not stipulate which individuals would bear the burden of the tax liability for the annuity. Complainant Williams now argues that PSE&G has breached the Settlement Agreement by withholding taxes and FICA from the purchase price of the annuity because he is not receiving the agreed upon [\$...] per month.

Section 15 of the Settlement Agreement states that Mr. Williams' retirement benefit shall be "based on a single life annuity." The Agreement does not specify any details whatsoever regarding PSE&G's purchase of the annuity for Mr. Williams. (See Settlement Agreement § 15). Therefore, PSE&G was well within the bounds of reasonable and fair conduct in purchasing the qualified annuity for Mr. Williams in the manner they did. Williams' attorney appears to argue that PSE&G should have treated Mr. Williams as they did other PSE&G employees, without taxing them on a lump sum annuity payment. Williams' attorney notes that "The company was not required under the federal tax laws to buy an annuity on behalf of Mr. Williams and deduct taxes out of the lump sum." (See *Complainant's Motion for Sanctions and to Enforce the Settlement Agreement* at 12). Williams' attorney is correct that **federal tax laws** did not require PSE&G to purchase the annuity on

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behalf of Mr. Williams. If PSE&G had not purchased the annuity as stated in Section 15 of the Agreement, such inaction would have constituted breach of the Agreement.

Mr. Williams' attorney argues that PSE&G should have purchased a non-qualified annuity from internal company assets, thereby reducing the tax burden on Mr. Williams. (See *Complainant's Motion for Sanctions and to Enforce the Settlement Agreement* at 14). First, Williams' attorney argues that PSE&G's actions have left Williams' annuity subject to a substantial risk of forfeiture. That argument is incorrect. In fact, the reason that PSE&G chose to purchase a qualified

annuity from an outside source, rather than create a nonqualified annuity from internal company assets, was to protect Williams annuity from PSE&G's creditors. (See *Response to Complainant's Motion to Enforce the Settlement Agreement* at 8). Williams is the sole and complete owner of his annuity, as indicated by his signature on documents from the Penn Mutual Life Insurance Company (See *Response to Complainant's Motion to Enforce the Settlement Agreement*, attachments).

Accordingly, it is my conclusion that PSE&G did not breach the Settlement Agreement with Complainant Bert Williams when it purchased an annuity for only the net amount due to Bert Williams after required tax withholdings. Mr. Williams is, pursuant to the terms of the agreement, further entitled to increased retirement and other benefits which the company may grant to company retirees in the future or has granted since the date of the settlement..

#### **ORDER**

Since this record does not support a finding that there has been a violation of the settlement agreement, the Claimant's Motion to Enforce the Settlement Agreement is denied.

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Administrative Law Judge  
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#### **[ENDNOTES]**

[1] The Secretary's Remand Order indicates that, although not required to do so, he would avoid mentioning the financial terms of the settlement agreement in order to respect the parties' agreement to keep the terms of the agreement in strict confidence. *Williams*, 94-ERA-2, slip op. at 2 n.1 (April 10, 1995).

[2] *Macktal v. Secretary of Labor*, 923 F.2d 1150 (5th Cir. 1991).

[3] *Id.*

[4] *Macktal* addressed a complainant who alleged that his attorney placed him under duress to agree to a settlement that was not in his best interest. *Id.* This Proposed Decision and Order relies on *Macktal* only to the extent that it addressed settlement procedures and Macktal's attorney's failure to inform Macktal of all potential consequences of the settlement

agreement.